

**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

CIVIL MISCELLANEOUS APPEAL No.305 of 2004

JUDGMENT: (per Hon'ble Sri Justice M. Satyanarayana Murthy)

The respondent/wife in Original Petition No.998 of 1995 on the file of the Court of Judge, Family Court at Hyderabad (for short, 'the trial Court'), preferred this Appeal against the order dated 04.12.2003.

2. The ranks given in O.P.No.998 of 1995 by the Judge, Family Court, Hyderabad, will be adopted through out the Judgment, for reference of convenience.

3. The petitioner (respondent in this appeal) filed petition under Section 13 (1) (ia) of Hindu Marriage Act, 1955, for grant of decree of divorce by dissolving the marriage between the petitioner and the respondent, alleging that their marriage was performed on 24.04.1992, as per Hindu Rites and Customs and during their wedlock, they blessed with a female child by name Nikita. The respondent developed hatredness towards the petitioner before blessing a child and started harassing him in all possible ways and subjected him to mental cruelty in order to coerce him to convey his mother's house to her and part with all his earnings, on the ground that he is old and impotent and that the respondent ill-treated and harassed the petitioner from time to time. She was in the habit of leaving the matrimonial house without informing him or his parents. Thus, the behavior of the respondent was totally in different and not expected from a prudent woman.

4. It is specifically contended that when the petitioner was arranged 'Sreemantham' function as per their caste custom, the respondent initially did not agree for the same, but after due persuasion, she accepted the same and accordingly, he made preparations for celebrating 'Sreemantham' function, but the respondent abruptly left to her parents' house causing disappointment and dismay to him, his family members and relations.

Thereupon, the mother of the respondent addressed Inland Letter dated

20.11.1992 to his mother begging pardon on behalf of the respondent for her behavior assuring that she would be alright in future. Thereafter, he made best efforts to know the welfare and delivery of the respondent and finally he got information about the delivery of her and accordingly he went to Bellampalli on 12.02.1993. In the third month of his daughter, he planned to celebrate 'Barasala' at Hyderabad, initially the respondent agreed for the same, but later she refused to come along with him without giving any reason when he went to Bellampally to bring the respondent and his daughter. The respondent conceived for the second time, but the same was aborted without the knowledge and consent of him and thereby caused mental harassment to him and his family members.

5. It is further contended in the petition that on 23.08.1993 again she left the matrimonial house along with her child without informing or taking prior permission from him or to his parents. Thereafter, he tried to get her whereabouts, but in vain. Later, he gave police complaint on 27.08.1993. On 24.09.1994 she came back to matrimonial house. Since October, 1993, the respondent completely stopped cohabiting with the petitioner though residing in the same house in a separate room. When he wanted to approach her to have sex, the respondent used to insult and humiliate him imputing that he is old hag and impotent. On 23.03.1994, the respondent started leveling baseless allegations against the petitioner's family, the mother of the petitioner reacted, the respondent went into the kitchen room and made an attempt to burn herself by pouring kerosene and set fire to her clothes. At that time, mother of the petitioner resisted for the same. Thereafter, the respondent gave complaint to the police against him and his family members, which was found to be false after due investigation by the police and which resulted in closure of the complaint.

6. It is further contended that on 30.03.1994, the parents of the respondent came to his house and suggested him to set up separate family, for which, he agreed with the fond hope that she may change her attitude in future. On 27.07.1994, she again left the house stating that she does not want to live in a rented house and that she has no interest in the old and impotent fellows like the petitioner and barged into the house of the

petitioner's mother and abused his mother, niece and sister. Unable to bear the torture of the respondent, the mother of the petitioner gave complaint to President of Mahila Dakshita Samithi, Hyderabad, who advised her to lodge a complaint to Police, and accordingly, she lodged a complaint to the police and as the respondent was not present in the house, no further action was taken.

7. On 12.08.1994 the respondent gave complaint to Nallakunta Police Station as well as Mahila Dakshita Samithi complaining about dowry harassment against the petitioner and his family members. On that, the CI of police, Nallakunta Police Station, enquired the mother of the petitioner and the respondent and later he found that the complaint, which was given by the respondent against the petitioner, was baseless, he admonished the respondent for giving a false complaint and advised her to solve the disputes before elders. Then, the respondent came to the house of the mother of the petitioner and collected her belongings and left the house along with the petitioner threatening that this was the only a beginning.

8. A Panchayat was held on 22.08.1994 to resolve the disputes, the respondent stated that she wanted to sever connections with the petitioner and in pursuance of the tension prevailed at such time, the meeting was postponed for 15 days. Thereafter, the respondent did not evince any interest to settle the disputes in the meeting and completely abandoned cohabitating with the petitioner since October, 1993.

9. It is further contended that the respondent made a false complaint against the petitioner and his family members for the offence punishable under Section 498-A IPC, which ended in acquittal and that filing of such false complaint by the respondent against the petitioner and his family members amounts to cruelty and therefore, the petitioner filed divorce petition seeking divorce dissolving the marriage between the petitioner and the respondent by granting a decree of divorce.

10. The respondent filed Counter denying the material allegations while admitting the relationship between the petitioner and the respondent and specifically denied the ill-treatment and harassment attributed to her and

contended that the petitioner and his mother ill-treated and harassed her on one pretext or the other and on account of harassment, she used to go to her parents house with the knowledge and consent of the petitioner only and that the petitioner while residing in the house at Warasiguda, Secunderabad, never looked after and maintained the respondent and her daughter with love and affection and never provided any financial assistance to them.

11. During the course of enquiry, on behalf of petitioner, Pws. 1 to 5 were examined and Exs. A.1 to A.22 were marked. On behalf of respondent, Rws. 1 to 4 were examined and Exs. B.1 and 2 were marked.

12. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court granted decree of divorce dissolving the marriage between the petitioner and respondent dated 24.04.1992.

13. Aggrieved by the decree and decretal order dated 04.12.2003 passed by the Judge, Family Court, Hyderabad, the present appeal is filed by the respondent in O.P. challenging the order on various grounds mainly contending that the trial court did not appreciate the oral and documentary evidence in proper perspective and allowed the petition only on the basis of Ex.A.1 letter written by the mother of the respondent to the mother of petitioner and the said letter is not within the knowledge of the respondent. In such a case, the finding based on Ex.A.1 is erroneous as it was written by his mother; that the trial Court did not appreciate the pleadings and evidence in support of the alleged cruelty and filing of the complaint by the respondent against her mother-in-law does not amount to cruelty, but the trial court did not appreciate the said fact with reference to law and committed an error.

Acquitting the petitioner and others in C.C.No.874 of 1995 itself is not a ground to grant decree as the petitioner intended to marry his niece, but the trial Court on wrong apperception of facts and law granted decree of divorce dissolving the marriage between the petitioner and the respondent while awarding permanent alimony of Rs.1,00,000/-, which is too low and prayed to set aside the decree and decretal order passed by the trial court in O.P.No. 998 of 1995.

14. The learned counsel for the respondent (appellant) herein would contend that mere giving of complaint to police against the petitioner and his mother by the respondent and prosecuting him and his family members and their acquittal in the criminal case itself would not constitute cruelty and the said Criminal case was ended in acquittal as the respondent failed to establish guilt beyond reasonable doubt. The statement before the Criminal Court in C.C.No.874 of 1995 is sufficient to establish the intention of the petitioner to marry his niece and subjecting her to harassment by demanding dowry, but the trial court did not appreciate the said fact with reference to law and hence, divorce cannot be granted dissolving the marriage between the petitioner and the respondent. But, the trial Court on wrong appreciation of facts and law granted decree of divorce.

15. *Per contra*, the learned counsel for the petitioner/ respondent herein contends that giving of false complaint and making the petitioner and his family members roam around the Courts on all dates of adjournments would certainly amount to mental cruelty and that there is every possibility to foist a similar case in future in case he lived with her. Therefore, the conduct of the respondent created reasonable apprehension in the mind of the petitioner that it is harmful or endanger for him to live with respondent and hence, the acts of the respondent amount to cruelty and therefore, the order of the trial Court is in accordance with law and prayed to dismiss the appeal by confirming the decree and decretal order passed in O.P.No. 998 of 1995.

16. Considering the rival contentions, oral and documentary evidence including the Order under challenge, the sole point that arise for consideration is:

“whether the acts or omissions attributed to the respondent (appellant here) amounts to cruelty creating reasonable apprehension in the mind of the petitioner (respondent herein) that it is harmful or endangerous for him to live with the respondent, if so, the marriage between the petitioner and the respondent be dissolved” ?

17. **Point** : The petitioner in the O.P. claimed divorce on the ground of

cruelty specifying various instances of cruelty, which are more than 10 in number, which I have mentioned in the earlier paragraphs and one of the contentions in the petition is that the respondent made a false complaint to Mahila Dashit Samitni, Hyderabad and also the police, but after due enquiry, the police referred the complaint and closed the same. Thus, making of such a complaint to the said Mahila Dashit Samiti caused mental agony to the petitioner and his family.

18. Again on 30.07.1994, the mother of the petitioner was called to Mahila Dashit Samiti, who advised to lodge a complaint with the police and accordingly, she made a complaint to Inspector of Police. Thereupon, a constable was sent to secure the presence of the respondent, but she did not appear before the police. Thus, she gave false complaint against the mother of the petitioner.

19. On 12.08.1984 at about 6.30 PM, a constable had come to the house of petitioner to take the petitioner and her mother to the police station, but by the time, the petitioner was absent at his house and the mother of the petitioner sought the help of Mr. Raghunath, friend of the petitioner, to go to Nallakuntla Police Station, where she came to know the respondent lodged a complaint for dowry harassment alleging *inter alia* that the petitioner was given dowry of Rs.2,00,000/- and 30 to 40 tulas of gold and again demanding the house or share in the property of his father-in-law and that his family members tried to immolate her by pouring kerosene. Thereupon, the SI of Police interrogated mother of the petitioner and the respondent and as the complaint was found to be baseless, the SI of Police admonished the respondent for giving false complaint and asked her to leave the house of her mother-in-law. Again, the respondent was called by SI of Police and the respondent repeated the same allegations and thereupon the SI of Police again admonished her and advised to leave the matrimonial house immediately. Thereafter, the respondent collected all her belongings from the house of the petitioner and threatened that this was only the beginning and that they will face experience in different situations in future. Out of fear, the mother of the petitioner gave a complaint to the woman protection cell on the next day. Thus, giving of false complaint against the petitioner and his

mother and made them to roam around the police station causing mental agony to the petitioner and his family members. Filing false complaint for the offence punishable under Section 498-A IPC and acquittal of petitioner and others by the Court after trial caused mental agony.

20. It is further contended that the trial Court after recording evidence and after hearing the arguments of both sides, discussed the conduct of the respondent at every movement and held that the petitioner was subjected to mental cruelty by the respondent and accordingly granted decree of divorce dissolving the marriage between the petitioner and the respondent dated 24.04.1992.

21. Before going to decide the acts of cruelty attributed to the respondent, it is apposite to advert to the definition of cruelty i.e., the meaning of cruelty for the purpose of Hindu Marriage Act.

22. The word '*cruelty*' is not defined in the Hindu Marriage Act. The law declared by the Apex Court is clear about what acts amounts to cruelty. In **Naveen Kohli Vs. Neelu Kohli**^[1], the Hon'ble Apex Court held as follows:

"To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions."

23. But in the recent judgment of Apex Court in **K. Sreenivasa Rao V. D.A.Deepa**^[2], the Hon'ble Apex Court held that filing of a false complaint for the offence punishable under Section 498-A IPC against the husband and his family members alleging ill-treatment and harassment of dowry and when it ended in acquittal disbelieving the allegations made in the complaint by the respondent, amounts to cruelty. In **Malati Ravi v.B.V.Ravi**^[3], the Hon'ble Apex Court held that subsequent events established on undisputed material brought on record can be considered and mental cruelty and its effect varies according to individual differences and their social and financial status. It is difficult to prove mental cruelty, but the Court can draw inference from

attending circumstances and considering material on record from social and economic background of both the spouses.

24. In the above two decisions, the Apex Court is of clear view that subsequent events that took place after the spouses were living separately shall also be taken into consideration to decide the matrimonial dispute. In **K. Sreenivasa Rao's** case (1 supra), a complaint was given by his wife and sent several applications to the High Court for his removal, but ultimately the criminal case, which was filed by her, ended in acquittal in appeal as the allegations made against the husband and his family members by the wife is false. In **Malati's** case (2 supra), the Hon'ble Apex Court had taken into consideration subsequent events of filing a criminal case against the husband and his family members by the wife for the offence punishable under Section 498-A IPC. Later, the Criminal Case, which was filed by the wife, was ended in acquittal after full fledged trial as the accused husband and his family members were found not guilty. Against the Judgment of Acquittal, the appellant/wife preferred appeal before the High Court obtaining special leave, which, ultimately, dismissed as withdrawn. Therefore, taking into consideration the conduct of the wife, the Hon'ble Apex Court held that such a conduct would directly amounts to cruelty. In the above judgment, both wife and husband are doctors having maintained good social status in the society and on account of confining the accused husband in jail for one day for the allegation made by her wife amounts to mental agony. In **Malati's** case (2 supra), the Hon'ble Apex Court has taken into consideration the subsequent events though there was no pleading about filing of the criminal case under Article 142 of Constitution of India and granted decree of divorce.

25. Learned counsel for appellant contended that there is no specific pleading about filing of false complaint against the petitioner for the offence under Section 494 IPC and the Court must confine its judgment to the pleadings and evidence before it and cannot travel beyond the pleadings to record a finding. Undoubtedly, the rules of pleadings are applicable to the matrimonial cases and it is settled law that the Court cannot travel beyond the pleadings and pass an order in favour of any one of the parties. But, in

the unreported judgment of the Apex Court in **Civil Appeal No.1213 of 2006 in K. Srinivas V. K. Sunitha**, held that filing of false complaint and prosecuting the husband and his family members and their acquittal after full fledged trial amounts to cruelty and at the same time, the Apex Court observed in para No.6 as follows:

“Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was lead, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf”.

From the observation extracted above in para No.6 of the above judgment, when parties are aware of the pleadings and filing of criminal complaint etc., and did not raise any objection before the Trial Court and failed to plead about filing of criminal complaint without any truth therein is of no consequence. Thus, the Apex Court almost took different view ignoring the general rules of pleadings in matrimonial cases. In view of the law laid down by the Apex Court that filing of false complaint against the husband and his family members and their acquittal would certainly amount to cruelty.

26. Keeping in view the principles laid down by Apex Court referred in the earlier paras, we would like to advert to the evidence on record:

The petitioner himself was examined as PW.1 and he narrated in his examination in chief as to how he was subjected to cruelty by the respondent. Whereas the respondent denied the said cruelty. In view of the law declared by the Hon'ble Apex Court in the above cited judgments, the Court has to take into consideration surrounding circumstances including social and economic status of the petitioner and educational background and the traditions, which they are following while considering whether a particular act amount to cruelty or not, more particularly, proof of mental cruelty is a difficult task, but it can be inferred from the surrounding circumstances.

27. Admittedly, Ex.A.1 is the letter written by the mother of the respondent.

It is contended by the counsel for appellant herein that when mother of the respondent addressed such a letter, the Court is not supposed to rely on such letter addressed by a person, who is not a party to the proceedings, and raised a specific ground in this behalf. No doubt, Ex.A.1 is the letter addressed by the mother of the respondent requesting the mother of petitioner to excuse the respondent for her behavior etc., The respondent in her cross examination admitted that her mother and father used to address letters to her mother-in-law and PW.1. She further admitted at page No.4 of her cross examination that her mother has written Ex.A.1 letter to the petitioner's mother requesting to excuse her if the respondent committed any misstate. A careful perusal of Ex.A.1 Letter, it is clear that since 1992, the behavior of the respondent is indifferent in the matrimonial home. Exs. A.14 and 15 would also disclose the in different attitude of the respondent at the matrimonial home. The trial Court basing on those letters concluded that the respondent developed in different attitude in matrimonial home. But, no doubt the letters under EXs. A.1,14 and 15 are not between inter-parties, those letters can not be relied on merely because a 3rd party to the proceeding addressed some letters that would not bind the respondent. Therefore, the conclusions arrived by the trial Court about the in-different attitude of the respondent based on Exs. A.1, 14 and 15 are erroneous since those letters are not between inter-parties.

28. One of the major contentions is that the respondent made a false complaint against her mother-in-law to harass her and there is a specific plea in the petition also. In the evidence of respondent/RW.1, she admitted in her cross examination at page No.3 that she lodged a complaint at Nallakunta Police station against her mother-in-law and in pursuance of the complaint, the mother of the petitioner was called to the police station twice and the same is specifically testified in the evidence and pleaded in the petition filed by the petitioner. However, the complaint was closed as it was referred as false by the police. Therefore, making of false complaint certainly causes mental agony to the petitioner and his family members.

29. Yet another contention of the petitioner is that the respondent made a

false complaint against the petitioner and his mother for the offence under Section 494 of IPC, which ended in acquittal after full fledged trial before the trial Court and such conduct caused mental agony to him. The said fact was not pleaded in the petition since the complaint was lodged subsequent to filing of the divorce petition. However, the evidence on record is sufficient to conclude that the respondent made a false complaint against the petitioner and his mother for the offence punishable under Section 498-A IPC. Admittedly, mother of the petitioner was aged more than 75 years and at page No.6 and 10 of her cross examination, the respondent admitted about making of a complaint against the mother of the petitioner and that the petitioner was called to the police station. At page No.8 of the Cross examination, Rw.1 admitted that she stated that PW.1 and his sister's daughter was sleeping in separate room, in C.C.No.874 of 1995 on the file of XXII Metropolitan Magistrate. Similarly, in page No.9 of the cross examination, she admitted as follows:

“ it is true that I have stated in C.C.No.875 of 1995 as PW.1 that my husband has performed marriage for second time with his sister's daughter saying that he is not interested on me and always wanted divorce and that I did not get sufficient dowry. He married another woman by name Sirisha. My statement in earlier evidence given in this Court in this matter that PW.1 has not married second time is not correct”.

In the specific statement extracted above, she asserted that her husband again married one Sirisha, but failed to prove such serious allegations during trial in C.C.No.875 of 1995. It is clear from the attribution made against the petitioner that the petitioner married one Sirisha, which was disbelieved by the XXII Metropolitan Magistrate Court, Hyderabad. Making such unethical and unholy allegations linking up the character of the petitioner with another women certainly amounts to mental harassment to the petitioner, who is a Civil Engineer. But as she failed to substantiate her contention by producing any evidence before the XXII Metropolitan Magistrate in C.C. No. 874 of 1995, the case ultimately ended in acquittal.

30. RW.1 further admitted in her cross examination at page No.9 that she filed a private complaint in C.C.No.874 of 1995 before XXII Metropolitan Magistrate after receipt of the notice in this petition and after consulting his advocate. It is also a fact that such private complaint was filed by the respondent against the petitioner and his family members and after due enquiry, the police filed charge sheet against the petitioner only. Ultimately, the respondent failed to establish the accusation against the petitioner. Therefore, it is evident from the admission of RW.1 that she filed false complaint against the petitioner making a serious allegation that the petitioner married another woman by name Sirisha. Making such unethical and unholy allegation in the complaint and making an attempt to produce evidence in support of unethical allegations, certainly causes mental pain, which cannot be explained by producing any evidence.

31. In view of the admitted facts on record in the evidence of RW.1, she gave a false complaint against her mother-in-law accusing her that the respondent was subjected to cruelty by her and on account of such complaint, the mother of the petitioner was called to police station at her old age of 75 years. However, filing of a private complaint in C.C.No. 875 of 1995 linking up the character of petitioner with another lady by making a serious allegation and his acquittal after full fledged trial by the Trial Court would certainly amounts to cruelty. The trial Court only on appreciation of oral and documentary evidence concluded that the petitioner was subjected to cruelty by the respondent by filing a false case and false complaint against them.

32. Admittedly, the petitioner is a civil engineer and carrying on business. Thus, the petitioner is having good educational and social background. The respondent by making false allegations made him to roam around the Court and police station apart, from that making a serious allegation linking his character with another lady Sirisha would certainly affects his reputation in the society being a Civil Engineer, carrying on business. If for any reason, the petitioner allows the respondent to live with him, there is every possibility to lodge a similar complaint in future. Therefore, taking into consideration, the conduct of the respondent before and after filing of the divorce petition, it can

be safely be concluded that the petitioner was subjected to cruelty by the respondent creating reasonable apprehension in his mind that it is harmful or injurious for him to live with respondent.

33. To grant decree of divorce, mere subjecting of cruelty by one spouse to other spouse is insufficient, if such cruelty created any reasonable apprehension in the mind of other spouse that it is harmful and injurious for the other spouse to live, it is a ground to grant decree of divorce. Therefore, taking into consideration the facts and circumstances of the case, the conduct of the respondent before and after filing of the divorce petition, relaxing the rule of pleading, in view of the observations made by the Apex Court in **K. Srinivasa** case. Therefore, this Court has find no legal infirmity in the finding recorded by the trial court under Section 13(1) (ia) of the Hindu Marriage Act. Hence, the point is answered in favour of the petitioner and against the respondent.

34. In view of the aforesaid discussion and the findings on Point No.1, this Court found no reason to *set-aside* the order under challenge and, consequently, the Appeal deserves to be dismissed.

35. In the result, the Civil Miscellaneous Appeal is dismissed confirming the order and decree dated 04.12.2003, passed in Original Petition No. 998 of 1995 by the learned Judge, Family Court at Hyderabad.

36. In consequence, the miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. No order as to costs.

RAMESH RANGANATHAN, J

**M. SATYANARAYANA MURTHY,
J**

Date: 02-02-2015.

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**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
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CIVIL MISCELLANEOUS APPEAL No.305 of 2004

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[\[2\]](#) 2013 5 SCC 226

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